

This Modification incorporates the following significant changes to contract DE-AC36-99GO10337:

I. Effective with the date of this modification the following changes are made to the Fee Structure of this Contract:

A. The Hydrogen Stretch Goals are deleted.

A1. Therefore, Section B.3 Fee is deleted and replaced with the following:

B.3 FEE

- (a) The Contract shall be performed on a Cost-Plus-Award Fee basis.
 (b) Total available fee, subject to the adjustment provision of clause H-9, shall be as follows:

Total Available Fee		
Period	Fee Base	Total Available Fee
October 1, 1999 through September 30, 2000	\$155,453,600	\$4,500,000
October 1, 2000 through September 30, 2001	\$155,453,600	\$4,657,500
October 1, 2001 through September 30, 2002	\$188,210,800	\$5,170,000
October 1, 2002 through September 30, 2003	\$203,072,200	\$5,411,000

- (c) Total available fee for all option years shall be determined in accordance with Clause H-9 and appears in the Table below.

Estimated Available Fee		
Fee Period	Estimated Fee Base	Estimated Available Fee
October 1, 2003 through September 30, 2004	\$207,000,000 (base year)	\$5,436,000
October 1, 2004 through September 30, 2005 *	\$207,000,000	\$5,436,000
October 1, 2005 through September 30, 2006 *	\$207,000,000	\$5,436,000
October 1, 2006 through September 30, 2007	\$207,000,000	\$5,436,000
October 1, 2007 through September 30, 2008	\$207,000,000	\$5,436,000

* In FY05 and FY06 fifteen percent of the Estimated Available Fee is set aside to incentivise the safe, construction of the Science and Technology Facility (S&TF) within budget and schedule thresholds.

- (d) In the event this contract is terminated for the Government's convenience, either in whole or in part, the amount of award fee available shall represent a pro rata distribution associated with the evaluation period activities or events as determined by the Contracting Officer. Such

determination shall be final and not subject to the terms of the "Dispute" Article or other article, or to any other appeal or court suit.

A2. Section H Special Contract Requirements, Clause H.9, Fee and Performance is deleted in its entirety and replaced with the following:

H-9 FEE AND PERFORMANCE

- (a) Contractor performance will be evaluated by the DOE each evaluation period (fiscal year) following the conclusion of each award fee period as described in the Performance Evaluation and Measurement Plan. The Contractor shall prepare and submit a Self-Assessment in accordance with DEAR 970.5215-1 "Total Available Fee: Base Fee Amount and Performance Fee Amount." Fee earned will be established by the Contracting Officer in consultation with the Fee Determining Official.
- (b) The Contractor may propose alternative fee arrangements to the DOE for consideration. Based on such alternative fee proposal the Contracting Officer, in consultation with the Fee Determining Official, may modify the fee mechanism to incorporate award fee, incentive fee, etc., or any combination thereof. Such modification will be in accordance with Total Available Fee, Base Fee Amount and Performance Fee Amount.
- (c) The Contractor shall submit a cost proposal to the DOE addressing all costs for the evaluation period prior to the start of the evaluation period but no later than August 15 of each year. DOE will use the cost proposal to make adjustments, if any, to the fee base. The result will be an adjusted award fee base.
- (d)
 - (1) Effective October 1, 2003 Available Annual Fee for the operations of the Laboratory as described in Section C Description/Specifications/Work Statement will be determined in accordance with the DOE Fee Policy. A fee discount factor of 1% will be applied to the maximum fee allowable as determined by the fixed fee schedules at DEAR 970.1504-1. In accordance with 970.1504-1, a management risk adjustment and a Classification Factor Category D shall be applied in the computation of Available Annual Fee for the operations of the Laboratory. Exclusions to the annual cost base shall also be in accordance with the above referenced clause.

Effective October 1, 2004 escalation will no longer be applied to the total available fee as determined by the fee policy.
- (e) Should the award fee base prepared in the same manner as (d)(1) above and utilizing NREL's current year cost proposal as submitted in (c) above, reflect a change to the adjusted award fee base, of plus or minus 5% of the base year adjusted award fee base, the Contracting Officer, in consultation with the Fee Determining Official may utilize this new adjusted award fee base to establish Total Available Fee. The Contracting Officer's determination whether or not to adjust fee will depend upon the management risk associated with the incremental work.
- (f) Provisional Payment of Fee
 - (1) The Contractor may draw up to one-twelfth (1/12) of 90% of the available fee for the fiscal year on the first day of each month, unless otherwise directed in writing by the Contracting Officer. The draw-down of fee is not to be construed as an evaluation of performance under

clause DEAR 970.5215-1, "Total Available Fee: Base Fee Amount and Performance Fee Amount."

- (2) Should DOE's evaluation of Contractor performance at the end of the fiscal year yield an earned fee less than the amount already drawn down by the Contractor, the Contractor agrees to repay the difference with interest calculated in accordance with DEAR 970.5215-1, Total Available Fee: Base Fee Amount and Performance Fee Amount.

A3. Section H, Special Contract Requirements, Clause H-20, MISSION STRETCH GOALS is deleted in its entirety. Section H, Special Contract Requirements, Table of Contents and subsequent Clauses are renumbered to reflect this change.

A4. Section J, LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACHMENTS, ATTACHMENT 12, Mission Stretch Goals and Performance Evaluation and Measurement Plan is deleted in its entirety.

- B. Up to fifteen percent of FY05 and FY06 Total Estimated Fee are set aside for the completion of Science and Technology Facility.

B1. Section B3, Fee of the Contract is revised as shown in section A1 above to reflect this change.

B2. Section H Special Contract Requirements, Clause H-22, "SCIENCE AND TECHNOLOGY FACILITY INCENTIVE FEE" is added as follows:

H-22, "SCIENCE AND TECHNOLOGY FACILITY INCENTIVE FEE"

ENVIRONMENT, SAFETY AND HEALTH

Objective

A safe completion of the project is of primary importance to DOE, therefore fifty percent (50%) of the incentive fee will be placed on this objective. Safe operations and construction are best facilitated and enhanced by focusing not only on lagging indicators such as OSHA Recordable events but looking toward leading indicators such as safety inspections, the identification and follow up of safety concerns, regularly scheduled meetings with subcontractor management and staff that identify safety as a principal topic, and the identification, evaluation, and control of new hazards as they are introduced onto the construction site. In this regard tracking leading indicators demonstrates a strong commitment and proactive safety program led by senior management officials and embraced by NREL staff.

Measurement

A quality ES&H management system includes, at a minimum, the following components:

1. Conducting weekly construction safety inspections and walk downs in collaboration with the DOE Golden Field Office;
2. Producing weekly summarizations of deficiencies, items of concern, and corrective actions taken;
3. Conducting regularly scheduled construction stormwater inspections;

4. Leading and conducting weekly project meetings chaired by NREL line management (project manager) that have safety as a principal topic; and
5. Participating in preconstruction meetings with both the subcontractor and with his subcontractors when new hazards will be introduced onto the work site, e.g., steel erection, the use of heavy equipment such as cranes, hot work, excavation, and work in confined spaces.

The successful implementation of the integrated management systems, as they relate to the construction of the S&TF, will be measured as indicated below.

(These are annual numbers)

As noted previously in this document, the ES&H performance is rated at 50% of the 15% of the fee set for this modification, which equates to 7-1/2% of \$5,436,000 (or ~\$407,700). 75% (~\$305,775) of this amount can be earned quarterly (~\$76,444 per quarter) and the remaining 25% (~\$101,925) will be awarded at the conclusion of each performance period. The indicators to be evaluated are as follows:

Environmental (1/3 of the ~\$76,444 quarterly fee)

- NREL will incur no sustained enforcement actions from local or federal regulatory authorities during the construction of the S&TF.

Safety (2/3 of the ~\$76,444 quarterly fee)

- OSHA Recordable injuries/illnesses occurring during the construction of the S&TF will be evaluated and fee earned quarterly using the following indicators: [the DOE construction injury/illness rate for 2004 is 2.2, which means that 2.2 injuries occurred per 100 workers.]

• <u>I/I rate >2.2</u>	<u>0 fee</u>
• <u>I/I rate 1.2<2.2</u>	<u>75% fee (~\$38,069)</u>
• <u>I/I rate 0.0<1.2</u>	<u>100% fee (~\$50,759)</u>

The 25% (~\$101,925) to be awarded at the conclusion of each performance period will be based on an evaluation of ES&H performance for the entire performance period and will utilize the following indicator:

- ES&H event and/or incident that has a negative impact on the overall scope, schedule, and cost of the S&TF at completion.

ON SCHEDULE

Objective

Delay of the project will result in both the inability to perform research as well as incurred additional costs. Therefore, thirty five percent (35%) of the incentive fee shall be placed on the completion of S&TF construction no later than the completion date identified in the schedule baseline, currently January 2007. This date may be changed by a fully approved change order only. These change orders, when requested by the Contractor and approved by the DOE Contracting Officer, may be the

result of delays determined to be outside of the control of the Contractor. Should a change be approved this clause shall apply to the revised date.

Measurement

For the purposes of payment of the FY05 fee, data shall be obtained from the Earned Value Management System at the end of the rating/performance period. The Schedule Performance Index, defined as BCWP/BCWS, will be used to measure schedule performance. A Schedule Performance Index of less than or equal to .90 will result in the loss of the FY05 fee available for this objective.

Payment of the FY06 fee available for this objective will be thirty five percent (35%) of the S&TF incentive fee and will be made in full (100%) at the completion of construction if completion is prior to the end of January 2007. The Contractor shall not receive any of the thirty five percent (35%) of incentive fee set aside for this objective if the S&TF is completed after the end of January 2007.

CONTROL OF COSTS

Objective

Due to the uncertainty in the timing of receipt of funds, the project will require significant control of costs and contingency. Therefore, fifteen percent (15%) of the incentive fee will be paid for management of cost. Should the FY06 required funding of \$10.5 M not be received by December 31, 2005, the parties will reevaluate the applicability of the incentive.

Measurement

Payment of both FY05 and FY06 incentive fee for this objective shall be based on data obtained from the Earned Value Management System at the end of the rating/performance period or the completion of the project whichever is applicable. The Cost Performance Index, defined as (BCWP/ACWP) will be used to measure cost performance. For both FY05 and FY06 a Cost Performance Index (CPI) greater than .90 shall result in the award of 100% of the incentive fee associated with this objective; however a CPI equal to or less than .90 shall result in a one hundred percent (100%) reduction of incentive fee associated with this objective.

LEEDS CERTIFICATION

Objective

It is the intent of DOE for this building to be a showcase laboratory rated at LEEDS Gold. Certification will not be completed until at least one year after building completion. Two percent (2%) of the total fee available in the year of LEEDTM certification submission will be set aside for this objective. The entire two percent (2%) shall be paid upon obtaining a LEEDTM certification of Gold.

Measurement

Obtaining a LEEDTM Gold certification of the completed S&TF.

- II. Section J, LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACHMENTS, ATTACHMENT 5 “OPERATING AND ADMINISTRATIVE REQUIREMENTS (LIST B)” is deleted and replaced in its entirety with the following which reflects the incorporation of the following changes:

Summary of Modifications to Attachment 5 Operating and Administrative Requirements

Added	DOE O 151.1B CRD Comprehensive Emergency Management System	CRD applicable in whole
Deleted	DOE O 151.1A CRD Comprehensive Emergency Management System	CRD applicable in whole
Added Extended	DOE N 205.8 CRD Cyber Security Requirements for Wireless Devices and Information Systems	CRD applicable in part
Added Extended	DOE N 205.9 CRD Certification and Accreditation Process for Information Systems Including National Security Systems	CRD applicable in part
Added Extended	DOE N 205.10 CRD Cyber Security Requirements for Risk Management	CRD applicable in part
Added Extended	DOE N 205.11 CRD Security Requirements for Remote Access to DOE and Applicable Contractor Information Technology Systems	CRD applicable in part
Added Extended	DOE N 205.12 CRD Clearing, Sanitizing, and Destroying Information System Storage Media, Memory Devices, and Other Related Hardware	CRD applicable in part
Added	DOE O 413.3 Change 1 CRD Program and Project Management for the Acquisition of Capital Assets	CRD applicable in whole
Deleted	DOE O 413.3 CRD Program and Project Management for the Acquisition of Capital Assets	CRD applicable in whole
Added	DOE O 414.1B CRD Quality Assurance	CRD applicable in whole
Deleted	DOE O 414.1A Change 1 CRD Quality Assurance	CRD applicable in whole
Extended	DOE O 470.1 CRD Safeguards and Security Program	CRD applicable in part

**SECTION J – LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACHMENTS
ATTACHMENT 5**

OPERATING AND ADMINISTRATIVE REQUIREMENTS (LIST B)

Prime Contract No. DE-AC36-99GO10337

June 3, 2005

The operating and administrative requirements, including the Contractor Requirements Documents of DOE directives listed below are applicable in whole or in part in accordance with clauses H-19 Application of DOE Contractor Requirements Documents and 970.5204-2, Laws, Regulations, and DOE Directives (DEC 2000). The concurrence analysis documenting applicability for each requirement below is maintained in the DOE Master File as well as any assurances as required by Clause H-19, are made a part of this Contract by reference and are managed through a formal change control process.

Operating and Administrative Requirements	Applicability
DOE O 110.3 CRD Conference Management Approved: 11/03/99	CRD applicable in whole
DOE O 130.1 CRD Budget Formulation Approved: 09/29/95	CRD applicable in whole
DOE O 142.3 CRD Unclassified Foreign Visits and Assignments Program Approved: 06/18/04	CRD applicable in whole
DOE O 151.1B CRD Comprehensive Emergency Management System Approved: 11/01/00	CRD applicable in whole
DOE O 200.1 CRD Information Management Program Approved: 09/30/96	CRD applicable in whole
DOE N 203.1 CRD Software Quality Assurance Approved: 10/02/00	CRD applicable in whole
DOE O 205.1 CRD Department of Energy Cyber Security Management Program Approved: 03/21/03	CRD applicable in whole
DOE N 205.2 CRD Foreign National Access to DOE Cyber Systems Approved: 11/01/99 DOE N 205.7, dated 02/12/04, extends this directive until 08/12/04	CRD applicable in whole
DOE N 205.3 CRD Password Generation, Protection and Use Approved: 11/23/99 DOE N 205.7, dated 02/12/04, extends this directive until 08/12/04	CRD applicable in part

Operating and Administrative Requirements	Applicability
DOE N 205.4 CRD Handling Cyber Security Alerts and Advisories and Reporting Cyber Security Incidents Approved: 03/18/02	CRD Applicable in part
DOE N 205.8 CRD Cyber Security Requirements for Wireless Devices and Information Systems Approved: 02/11/04 DOE N 205.15, dated 03/18/05, extends this directive until 03/18/06	CRD applicable in part
DOE N 205.9 CRD Certification and Accreditation Process for Information Systems Including National Security Systems Approved: 02/19/04 DOE N 205.15, dated 03/18/05, extends this directive until 03/18/06	CRD applicable in part
DOE N 205.10 CRD Cyber Security Requirements for Risk Management Approved: 02/19/04 DOE N 205.15, dated 03/18/05, extends this directive until 03/18/06	CRD applicable in part
DOE N 205.11 CRD Security Requirements for Remote Access to DOE and Applicable Contractor Information Technology Systems Approved: 02/19/04 DOE N 205.15, dated 03/18/05, extends this directive until 03/18/06	CRD applicable in part
DOE N 205.12 CRD Clearing, Sanitizing, and Destroying Information System Storage Media, Memory Devices, and Other Related Hardware Approved: 02/19/04 DOE N 205.15, dated 03/18/05, extends this directive until 03/18/06	CRD applicable in part
DOE O 221.1 CRD Reporting Fraud, Waste, and Abuse to the Office of Inspector General Approved: 03/22/01	CRD applicable in whole
DOE O 221.2 CRD Cooperation with the OIG Approved: 03/22/01	CRD applicable in whole
DOE O 225.1A CRD Accident Investigations Approved: 11/26/97	CRD applicable in whole
DOE M 231.1-1A CRD Environment, Safety and Health Reporting Manual Approved: 03/19/04	CRD applicable in whole
DOE M 231.1-2 CRD Occurrence Reporting and Processing of Operations Information Approved: 08/19/03	CRD applicable in whole
DOE O 241.1A CRD Scientific and Technical Information Management Approved: 04/09/01	CRD applicable in whole

Operating and Administrative Requirements	Applicability
DOE O 251.1A CRD Directives System Approved: 01/30/98	CRD applicable in whole
DOE O 350.1 Change 1 CRD(s) Contractor Human Resource Management Programs Approved: 09/30/96 Change 1: 05/08/98	CRD applicable in whole
DOE O 350.2A CRD Use of Management and Operating or Other Facility Management Contractor Employees for Services to DOE in the Washington, D.C., Area Approved: 10/29/03	CRD applicable in whole
DOE O 412.1 CRD Work Authorization System Approved: 04/20/99	CRD applicable in whole
DOE O 413.1A CRD Management Control Program Approved: 04/18/02	CRD applicable in whole
DOE O 413.3 Change 1 CRD Program and Project Management for the Acquisition of Capital Assets Approved: 10/13/00 Change 1: 01/03/05	CRD applicable in whole
DOE O 414.1B CRD Quality Assurance Approved: 04/29/04	CRD applicable in whole
DOE O 430.1B CRD Real Property Asset Management Approved: 09/24/03	CRD applicable in whole
DOE O 430.2A CRD Departmental Energy and Utilities Management Approved: 04/15/02	CRD applicable in whole
DOE O 443.1 CRD Protection of Human Subjects Approved: 05/15/00	CRD applicable in whole
DOE O 450.1 CRD Environmental Protection Program Approved: 01/15/03	CRD applicable in whole
DOE O 470.1 Change 1 CRD Safeguards and Security Program Approved: 09/28/95 Change 1: 06/21/96 DOE N 251.53, dated 05/14/03, extends this directive until 05/14/04 Partial deletion by DOE O 471.4 Incidents of Security Concern. DOE O 471.4 Incidents of Security Concern partially deletes DOE O 470.1, Change 1, Safeguards and Security Program, by canceling Chapter VII, "Incidents of Safeguards and Security Concern" DOE N 251.63, dated 05/11/05, extends this directive until 05/11/06	CRD applicable in part

Operating and Administrative Requirements	Applicability
DOE O 470.2B CRD Independent Oversight and Performance Assurance Program Approved: 10/31/02	CRD applicable in whole
DOE O 471.4 CRD Incidents of Security Concern Approved: 03/17/04	CRD applicable in part
DOE O 473.1 CRD Physical Protection Program Approved: 12/23/02	CRD applicable in part
DOE M 473.1-1 CRD Physical Protection Program Manual Approved: 12/23/02	CRD applicable in part
DOE O 473.2 CRD Protective Force Program Approved: 06/30/00	CRD applicable in part
DOE N 473.8 CRD Security Conditions Approved: 08/07/02	CRD applicable in whole
DOE N 481.1A CRD Reimbursable Work for Department of Homeland Security Approved: 04/21/03 DOE N 251.56, dated 04/20/04, extends this directive until 04/20/05	CRD applicable in whole
DOE O 481.1B CRD Work for Others (Non-Department of Energy Funded Work) Approved: 09/28/01	CRD applicable in whole
DOE O 482.1 CRD DOE Facilities Technology Partnering Programs Approved: 01/12/01	CRD applicable in whole
DOE O 483.1 CRD DOE Cooperative Research and Development Agreements Approved: 01/12/01	CRD applicable in whole
DOE O 522.1 CRD Pricing of Departmental Materials and Services Approved: 11/03/04	CRD applicable in whole
DOE O 534.1B CRD Accounting Approved: 01/06/03	CRD applicable in whole
DOE O 551.1B CRD Official Foreign Travel Approved: 08/19/03	CRD applicable in whole

III. Section I, Contract Clauses is revised to include the following deviation to DEAR 970.5227-2 Rights in Data – Technology Transfer (DEC 2000), Clause I.105, Paragraph B(3) of contract DE-AC36-99GO10337 to operate the National Renewable Energy Laboratory

B (3) The Contractor agrees that for limited rights data or restricted computer software or other technical business or financial data in the form of recorded information including commercially valuable technical data and information as defined in 10C.F.R. 1004.3(e)(4) (Dec. 12, 1994) under the Department's "Controlled Hydrogen Fleet and Infrastructure Demonstration and Validation Project" and successor projects when so designated in writing by the Contracting Officer, which it receives from, or is given access to by DOE or a third party, including a DOE contractor or subcontractor, and for technical data or computer software it first produces under this Contract which is authorized to be marked by DOE, the Contractor shall treat such data and information in accordance with any restrictive legend contained thereon.

IV. All other terms and conditions of the contract remain the same.